REMARKS

The non-final Office Action, mailed October 5, 2005, considered and rejected claims 1-18, 30, 36-38 and 40-45. Claims 1, 3-13, 30, 38 and 40-44 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Markel et al. (U.S. Patent Publ. No. 2002/0057286) in view of Keronen et al (U.S. Patent No. 6,567,530). Claims 14-18, 36 and 37 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Markel et al. (U.S. Patent Publ. No. 2002/0057286) in view of Keronen et al (U.S. Patent No. 6,567,530), and further in view of Carr (U.S. Patent Publ. No. 2003/0133043). Claim 45 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Markel et al. (U.S. Patent Publ. No. 2002/0057286) in view of Keronen et al (U.S. Patent No. 6,567,530), and further in view of Davis et al. (U.S. Patent Publ. No. 2002/0095677). Claim 2 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Markel et al. (U.S. Pat. Publ. No. 2002/0057286) in view of Keronen et al (U.S. Patent No. 6,567,530), and further in view of Valdez, Jr. (U.S. Patent No. 6,426,778).[1]

By this paper, no claims have been amended, added or cancelled. Accordingly, following this paper, claims 3-9 and 11-23 remain pending, of which, claims 12, 19 and 23 are the only independent claims at issue.

The present invention is generally directed to embodiments for delivering enhanced programming content. As recited in claim 1, for example, the claimed method includes the act of obtaining a schema document having various data structures, including a timeline data structure that specifies a specific time and order for delivering the other structures of the schema document (e.g. a trigger data structure, an announcement data structure, and a package data structure). The timeline data structure can also include a loop attribute that can be used to prevent delivery of the enhanced programming content multiple times. The timeline data structure is analyzed and the authenticity of the schema document is verified against a stored standardized schema document. Thereafter, the various structures of the schema document are

[1] Although the prior art status of the Keronen, Carr and Valdez, Jr. references, as well as some of the assertions made with regard to the cited art, are not being challenged at this time, Applicant reserves the right to challenge the prior art status and assertions made with regard to the cited art, as well as any official notice, which was taken in the last response, at any appropriate time in the future, should the need arise, such as, for example in a subsequent amendment or during prosecution of a related application. Accordingly, Applicant's decision not to respond to any particular assertions or rejections in this paper should not be construed as Applicant acquiescing to said assertions or rejections.

delivered as specified by the timeline. As further clarified by the recited claims, the schema document is generic and non-specific to hardware and software modules associated with authoring tools used to create enhanced programming content, such that delivery of the enhanced programming content is multi-platform compatible.

As noted above, the Examiner has rejected the claimed embodiment of the present invention as obvious in light of the combined teachings of *Markel* and *Keronen*. Applicant respectfully traverses.

In particular, Applicant submits that a *prima facie* case of obviousness has not been established as to any claim presented in the last amendment. More particularly, Applicant submits that various teachings of *Markel*, which were relied upon by the Examiner in rejecting the pending claims, are not prior art with respect to the present application and, accordingly, the cited references fail to teach or suggest each and every limitation of the claimed invention.

Initially, it will be noted that the *Markel* publication, which is the primary references, was filed in the United States on November 20, 2001, which is after the filing of the present application. However, *Markel* claims priority to U.S. Provisional Application No. 60/227,930 which was filed on August 25, 2000, prior to the filing date of the present application. Accordingly, only the portion of *Markel* which has corresponding supporting disclosure in the '930 provisional application can be considered prior art to the present application.[2] M.P.E.P. § 706.02(f)(1).

Applicant respectfully notes that the '930 provisional application generally discloses a system and method for creating enhanced television content by "utilizing a standard browser providing click-and-drag techniques" to create an XML program file (pp. 1-2). Using a WYSIWYG browser environment, a project may be created in which various graphics (e.g. Today, Local News, Sports, Traffic, etc.) may be positioned on a canvas by click-and-drag techniques (pp. 2-3). Textual objects may be similarly located, sized, and formatted on the canvas (p. 3).

[2] Nothing in this response should be interpreted as acquiescence to the prior art status of teachings in *Markel* which may be adequately supported by the '930 provisional application. Applicant specifically reserves the right to challenge the status of any or all teachings in *Markel* as a prior art, should Applicant deem it necessary or appropriate. Accordingly, all arguments with respect to *Markel* and the '930 provisional are made simply assuming *arguendo*, for purposes of this response, that the '930 provisional qualifies the *Markel* publication as prior art for some teaching.

To create enhanced television content, the '930 provisional describes a rules based database which tailors the XML program according to enhanced television standards. In particular, as the canvas is being assembled, the XML program file is generated and each new graphic, text, etc. is automatically incorporated into the XML program (p. 3-4).

While the '930 provisional application and *Markel* each generally describe providing enhanced television content that may be employed across a plurality of platforms without re-editing the information, numerous teachings of *Markel* (and which are relied upon by the Examiner as the basis of the rejections under 35 U.S.C. § 103(a)) are clearly unsupported by the '930 provisional application.[3] For example, the Examiner has argued that *Markel* teaches the claimed schema document (comprising a trigger data structure, announcement data structure, package data structure, and timeline data structure) and cites the teaching of *Markel* directed towards a file that includes "enhancement types, enhancement attributes, scheduling, and other information" in combination with Figs. 4 and 5, and Attachment A (Office Action, pp. 2-3). As noted by the Examiner, Figure 4 illustrates a child element which includes head elements, library elements, content elements, and timeline elements (Office Action, p. 3; *Markel*, ¶ 26).

However, even if this teaching of *Markel* were to teach a schema document comprising a trigger data structure, announcement data structure, package data structure, and timeline data structure, to which Applicant does not acquiesce, this teaching is unsupported by the '930 provisional application which merely describes a click-and-drag technique for automatically creating XML program files. In particular, the '590 provisional does not teach, among other things, any timeline element, let alone a timeline data structure within a schema document, as claimed. As the '930 provisional fails to teach any aspect of a timeline element, it similarly fails to teach any timing of the timeline by specifying specific times, relative to a specific start time, and a particular order for delivering each of the trigger, announcement and package data structures, as well as analyzing the timeline data structure, and delivering various structures as specified by the timeline, as claimed. Accordingly, any teachings of *Markel* with respect to the timeline elements can have a prior art date only as of the November 30, 2001 filing date. As the

[3] Inasmuch as Applicant herein challenges the prior art status of various teachings in *Markel*, various specific assertions made by the Examiner with respect to the teachings of *Markel* are not addressed. Because *Markel* should be removed as a reference, the absence of such arguments should not be taken as Applicant acquiescing to such assertions and, Applicant reserves the right to challenge the Examiner's characterizations of *Markel* at any time, should the need arise.

Markel filing date is subsequent to the filing date of the present application, Applicant respectfully submits that the teachings of *Markel* are not prior art to the present application.

Similarly, Applicant respectfully notes that the entirety of Attachment A in *Markel* lacks support in the '930 provisional, including at least the description "startTime", "loopNTimes" and "loopInterval" attributes (¶ 27; p. 35) relied upon by the Examiner as teaching the claimed "loop attribute to prevent multiple delivery of the enhanced programming content to the receiver" (*see* Office Action, p. 3). Inasmuch as the '930 provisional application fails to describe any "startTime", "loopNTimes" or "loopInterval" attribute, or any loop attribute of any sort, any such teaching in *Markel* is unsupported by the '930 provisional and, accordingly, *Markel* does not qualify as prior art to the present application.

In addition, Applicant respectfully notes that other teachings of *Markel* are similarly unsupported. For instance, by way of example and not limitation, teachings related to scheduling enhancements (¶ 27) and the retransmitExpiration parameter that carousels resources (*see* Office Action, p. 4), are similarly unsupported by the '930 provisional application and are unavailable as prior art teachings.

For at least these reasons, Applicant respectfully submits that the teachings of *Markel* are not prior art with respect to the present application. Accordingly, Applicant respectfully submits that a *prima facie* case of obviousness has not been made and the rejection of record has been overcome. In particular, as *Markel* is not prior art to the present application, the *Keronen* patent does not, standing alone, remedy the deficiencies by *Markel* by teaching each and every limitation of the recited claim. For instance, among other things, *Keronen* also fails to teach a timeline element, as claimed, and particularly in combination with the other recited claim limitations.

Accordingly, and for at least these reasons, Applicant respectfully submits that *Markel* is not a proper prior art reference and that even if *Keronen* is prior art, it clearly fails to anticpate or make obvious the claimed invention. Inasmuch as each of the remaining claims pending in the present application depend from independent claim 1, it will be appreciated that all of the remaining rejections and assertions of record with respect to the dependent claims are now moot and therefore need not be addressed individually. Nevertheless, for the record, Applicant will address a few dependent claims.

With regard, to claim 40, Applicant respectfully submit that the official notice taken in the Office Action is insufficient to raise a *prima facie* case of obviousness. In particular, the Office Action takes official notice that it is "well known to use tag information for identification purposes so as to ensure correct receipt of information." Even if this is the case, to which Applicant does not acquiesce, Applicant respectfully notes that this is not what is claimed. In particular, the official notice fails to teach or suggest that the tag is *in a schema document* and that the schema document *can be used to validate the authenticity of the schema document*, as claimed. Accordingly, to the extent the Examiner intends to continue reliance on official notice in asserting obviousness under 35 U.S.C. § 103(a), Applicant respectfully requests a recitation of a reference which qualifies a prior art and teaches the claimed element, namely a tag in a schema document used to validate the authenticity of the schema document.

With respect to claim 45, Applicant notes that the earliest effective filing date for any portion of the *Davis* reference appears to be January 17, 2001. Inasmuch as this priority date for *Davis* is after the filing date of the present application, Applicant respectfully submits that *Davis* is not prior art and withdrawal of the rejection of claim 45 is respectfully requested.

Accordingly, and in view of the foregoing, it will be appreciated that all of the rejections and assertions of record with respect to the independent and dependent claims have been overcome. In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 8 day of December, 2005.

Respectfully submitted,

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